

# **EXHIBIT B**

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40  
41 **UNITED STATES DISTRICT COURT**  
42  
43 **NORTHERN DISTRICT OF CALIFORNIA**  
44  
45 **SAN FRANCISCO DIVISION**

46 ORACLE AMERICA, INC.

47 Case No. 3:10-cv-03561-WHA

48 Plaintiff,

49 Honorable Judge William Alsup

50 v.

51 **DEFENDANT GOOGLE INC.'S**  
52 **FIFTH SUPPLEMENTAL RESPONSES**  
53 **TO PLAINTIFF'S INTERROGATORIES,**  
54 **SET ONE, NO. 3**

55 GOOGLE INC.

56 Defendant.

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forth all of its bases for its defenses, as Google objects that such a response would be unduly burdensome, premature, and require the unwarranted disclosures of attorney work product and attorney-client privileged information.

15. Google incorporates by reference these General Objections into the specific objections and responses set forth below. While Google may repeat a General Objection for emphasis or some other reason, the failure to specifically refer to any General Objection does not constitute a waiver of any sort. Moreover, subject to the requirements of Rule 33 of the Federal Rules, Google reserves the right to alter or amend its objections and responses set forth herein as additional facts are ascertained and analyzed.

16. Google remains willing to meet and confer with respect to any of its objections to assist Plaintiff in clarifying or narrowing the scope of the requested discovery, and reserves the right to move for a protective order if agreement cannot be reached.

## **SPECIFIC OBJECTIONS AND RESPONSES**

Google's responses to Plaintiff's Interrogatories are based upon Google's current information and belief as a result of reasonable searches and inquiries. Google reserves its right to amend and supplement its responses as it learns additional facts.

**INTERROGATORY NO. 3:**

Please explain the factual and legal bases for Google's pleading of its first affirmative defense: No Patent Infringement.

### **THIRD SUPPLEMENTAL RESPONSE:**

In addition to its General Objections, Google objects to this Interrogatory as it seeks information protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege, immunity, or protection. Google further objects to this Interrogatory as unduly burdensome as it is not reasonably calculated to lead to the discovery of admissible information. Google further objects to the request to “explain” factual bases as vague and ambiguous. Google further objects to any implication in this Interrogatory that Google has any

- 1     • **Claims 1, 5, 6, and 14, and all dependent claims that depend therefrom:** As presently  
2     understood, Oracle has not made a showing of infringement at least because the material  
3     cited for “providing security” element at pages 1-4 of Exhibit E does not meet the claim  
4     element even if it were implemented and used in a device in the form it is recited in Exhibit  
5     D because the cited material has not been shown to have been used to provide security in any  
6     system and is not capable of doing so. First, Oracle’s only purported evidence of use is in the  
7     context of the execution of the Compatibility Test Suite (CTS). Such a use would be in a  
8     controlled environment and cannot be said to be providing security. Second, because native  
9     code may be accessed by Android applications and because native code is unaffected by the  
10    cited material, the cited material cannot be said to provide security. Each other independent  
11    claim in Exhibit D references Oracle’s citation for claim 1 for similar elements and the same  
12    basis applies to those claims.
- 13    • **All Asserted Claims:** Google served its Invalidity Contentions on January 18, 2011,  
14    detailing its bases for the invalidity of each asserted claim of this patent. Google contends  
15    that each asserted claim is invalid and therefore Google cannot infringe such a claim.

16    **The ‘520 Patent**

- 17    • **Claims 1, 6, and 18, and all dependent claims that depend therefrom:** For these claims,  
18    Oracle has failed to identify on a claim by claim basis in Exhibit F the actual performance of  
19    any allegedly infringing method and has instead relied on general statements referring to  
20    “Android and its development environment . . . .” All of these claims implicate the  
21    performance of a method and the charts in Exhibit F are devoid of any example of any  
22    method being performed, thereby precluding a finding of infringement. Oracle has not made  
23    a showing of infringement because it has not identified any allegedly infringing act or  
24    purported direct infringer for these claims and has yet to provide them in supplemental  
25    disclosures under the Patent Local Rules.
- 26    • **Claims 12, and all dependent claims that depend therefrom:** For these claims, Oracle has  
27    failed to identify on a claim by claim basis in Exhibit F any specific device that allegedly  
28    infringes and has instead relied on general statements referring to “[a]ny device or computer

1 which can run the Android dx tool.” Oracle has not made a showing of infringement because  
 2 it has not identified any specific allegedly infringing device or purported direct infringer for  
 3 these claims and has yet to provide them in supplemental disclosures under the Patent Local  
 4 Rules.

- 5 • **Claim 1 and all dependent claims that depend therefrom:** Oracle accuses its own javac  
 6 compiler as an element of its allegations for United States Patent No. 6,061,520. Upon  
 7 information and belief, Google expects discovery to reveal that alleged direct infringers,  
 8 when identified, are licensed to use that product. Until Oracle identifies on a claim by claim  
 9 basis the identity of alleged direct infringers performing each step of each claim and Google  
 10 receives information regarding Oracle’s licenses, Google cannot respond more fully.
- 11 • **All Asserted Claims:** As presently understood, Oracle has not made a showing of  
 12 infringement of claim 1 at least because the material cited for the “simulating execution of  
 13 the byte codes of the clinit method against a memory without executing the byte codes to  
 14 identify the static initialization of the array by the preloader” element at pages 9-19 of  
 15 Exhibit F does not meet the claim element even if it were implemented and used in a device  
 16 in the form it is recited in Exhibit F and Oracle has not made a showing of infringement of  
 17 claim 6 because the material cited for the “play executing the code without running the code  
 18 on the component to identify the operation if the code were run by the processing  
 19 component” element at pages 39-44 of Exhibit F does not meet the claim element even if it  
 20 were implemented and used in a device in the form it is recited in Exhibit F because it would  
 21 not employ a method of simulating execution or play executing in that there would be no  
 22 actual execution of the byte codes while identifying an array initialization instruction. The  
 23 material cited for this element is a pattern matching algorithm in which bytecodes are not  
 24 executed and/or in which there is no simulation of execution of the bytecodes. Each other  
 25 independent claim in Exhibit F references Oracle’s citation for claim 1 or claim 6 for a  
 26 similar element and the same basis applies to those claims. (See, e.g., Claim 12 (“See claim  
 27 1, *supra*” in chart for “play executing the clinit method . . .” element), Claim 18 (“See claim  
 28 6, *supra*” in chart for “simulating execution . . .” element).)

- 1     • **Claim 4:** As presently understood, Oracle has not made a showing of infringement of claim  
2 at least because the material cited for the “wherein the play executing step includes the  
3 steps of: . . . performing the manipulation of the local variables on the allocated variables”  
4 element at page 39 of Exhibit F does not meet the claim element even if it were implemented  
5 and used in a device in the form it is recited in Exhibit F because there would be no actual  
6 manipulation of the local variables on the allocated variables in order to identify the static  
7 initialization of the array. The material cited for this element is a pattern matching algorithm  
8 that does not perform any manipulation of local variables of the clinit method.
- 9     • **Claims 1, 12, and all dependent claims that depend therefrom:** For these claims, Oracle  
10 has failed to identify an Accused Instrumentality or single party that performs all of the  
11 recited steps.
- 12     • **All Asserted Claims:** As presently understood, Oracle has not made a showing of  
13 infringement for any of the asserted claims at least because the material cited in Exhibit F for  
14 elements requiring creating or storing an instruction to perform a particular function, e.g.,  
15 Claim 1 (“storing . . . an instruction requesting the static initialization of the array), Claims 6,  
16 18 (“creating an instruction for the processing component to perform the operation”), Claim  
17 12 (“creating an instruction to perform the static initialization”), does not meet the claim  
18 elements even if it were implemented and used in a device in the form it is recited in Exhibit  
19 F because (1) it would not employ a method that creates or stores a single instruction to  
20 perform each of the respective accused functions in that there are multiple instructions  
21 identified in Exhibit F, and none of them alone can be used to create and initialize the recited  
22 data structure with values contained in the instruction; and/or (2) it would not employ a  
23 method that creates or stores a constant pool entry.

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- 1     • **All Asserted Claims:** Oracle has not made any showing or specific allegation of indirect  
2       infringement attributable to Google through inducement or contributory infringement.  
3       Oracle has not identified any alleged direct infringer, thereby precluding indirect  
4       infringement. Further, Oracle has not demonstrated that Google had specific knowledge of  
5       this patent sufficient for either inducement or contributory infringement. Although Oracle  
6       made a cosmetic supplementation, Oracle continues to simply assert the unsubstantiated  
7       conclusion that “the Accused Instrumentalities are specially made or adapted for  
8       infringement and are not a staple article suitable for substantial non-infringing use,” without  
9       any factual support despite the fact that it is Oracle’s burden to prove that the Accused  
10      Instrumentalities are not suitable for substantial non-infringing use pursuant to 35 U.S.C.  
11       § 271(c). Oracle has not endeavored any analysis of even readily available public open  
12      source applications and continues to simply rely on a purely conclusory statement. As a  
13      result, Oracle cannot establish infringement as a matter of law.
- 14     • **All Asserted Claims:** Google served its Invalidity Contentions on January 18, 2011,  
15       detailing its bases for the invalidity of each asserted claim of this patent. Google contends  
16       that each asserted claim is invalid and therefore Google cannot infringe such a claim.

17     **The ‘720 Patent**

- 18     • **Claims 1 and 20, and all dependent claims that depend therefrom:** For these claims,  
19       Oracle has failed to identify on a claim by claim basis in Exhibit G any specific device that  
20       allegedly infringes and has instead relied on general statements referring to “[a] system  
21       running Android.” Oracle has not made a showing of infringement because it has not  
22       identified any specific allegedly infringing device or purported direct infringer for these  
23       claims and has yet to provide them in supplemental disclosures under the Patent Local Rules.
- 24     • **Claim 10, and all dependent claims that depend therefrom:** For these claims, Oracle has  
25       failed to identify on a claim by claim basis in Exhibit G the actual performance of any  
26       allegedly infringing method and has instead relied on a reference to claim 1, which contains a  
27       general statement “[a] system running Android . . . .” Because claim 10 is a method claim,  
28       this allegation is deficient on its face. All of these claims implicate the performance of a

1 DATED: August 1, 2011

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## **CERTIFICATE OF SERVICE**

I hereby certify that on this day, August 1, 2011, I served a true and correct copy of DEFENDANT GOOGLE INC.'S FIFTH SUPPLEMENTAL RESPONSES TO PLAINTIFF'S INTERROGATORIES, SET ONE, NO. 3 via e-mail on the following individuals:

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